

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

IAN S. PHILLIPS
58 Otter Cove Drive
Old Saybrook, CT 06475

Plaintiff

v.

MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED
4 World Financial Center
New York, NY 10271

Defendant

CIVIL ACTION NO. 05-742

WAIVER OF SERVICE OF SUMMONS

To: Merrill Lynch, Pierce, Fenner &
Smith, Incorporated
c/o Dimitri Nemirovsky, Esquire
Bringham McCutchen, LLP
399 Park Avenue
New York, NY 10022-4689

I acknowledge receipt of your request that I waive service of a summons in the action of

IAN S. PHILLIPS v. MERRILL LYNCH, PIERCE, FENNER & SMITH,

INCORPORATED which is case number 05-742 in the United States District Court of

Delaware. I have also received a copy of the complaint in the action, two copies of this

instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the Complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity of whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the Court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgement may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after May 13, 2005, or with 90 days after that date if the request was sent outside the United States.

Signature

Printed/typed

Name: _____

as _____

of Merrill Lynch, Pierce, Fenner & Smith
Incorporated

**Duty to Avoid Unnecessary
Costs of Service of Summons**

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the Court or to the place where the action has been brought. A defendant who waives service must within the time specified on the waiver form serve on the Plaintiff's attorney (or unrepresented plaintiff) a response to the Complaint and must also file a signed copy of the response with the Court or to the place where the action has been brought.

A defendant who waives service must with the time specified on the waiver form serve on the Plaintiff's attorney (or unrepresented plaintiff) a response to the Complaint and must also file a signed copy of the response with the Court. If the answer or motion is not served within this time, a default judgment may be taken against the defendant. By waiving service, a defendant is

allowed more time to answer than if the summons has been actually served when the request for waiver of service was received.

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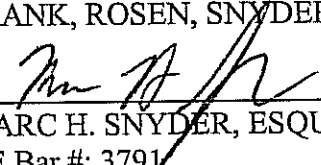
CERTIFICATE OF SERVICE

I Marc H. Snyder, Esquire, do hereby certify that on this 1st day of November, 2005, a copy of the foregoing WAIVER OF SERVICE OF SUMMONS were delivered via Lexis Nexis File and Serve and/or First Class Mail, postage prepaid upon:

Dimitri Nemirovsky, Esquire
Bringham McCutchen, LLP
399 Park Avenue
New York, NY 10022-4689

FRANK, ROSEN, SNYDER & MOSS, LLP

By:


MARC H. SNYDER, ESQUIRE
DE Bar #: 3791
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Wilmington, DE 19810
(302) 475-8060